

Appl. No. 09/160,635
Reply to Office Action of April 27, 2005

Remarks

Introduction

Claims 10, 16-20, 22-25, 28, and 29 were pending. By way of this response, claims 10, 19, 20, 23, 25, and 28 have been amended. Support for the amendments to the claims can be found in the application as originally filed, and care has been taken to avoid adding new matter. For example, support for the amendments to the claims can be found at least at page 4, line 8 to page 6, line 19. Accordingly, claims 10, 16-20, 22-25, 28, and 29 are currently pending.

These amendments have been made to facilitate the prosecution of the above-identified application. Applicant reserves the right to seek patent protection for any of the previous claims and any other claims supported by the present specification in one or more later filed related applications.

Obviousness-Type Double Patenting

Claims 10, 18, 19, 20, and 23 have been rejected as being obvious over claim 1 of U.S. Patent No. 5,869,079. In particular, the Office Action states that it would be obvious to add a second therapeutic agent with similar activity to obtain the beneficial effect of both agents.

Independent claims 10, 19, and 20 have been amended to recite that the release modulator comprises a second therapeutically active agent having a different activity than the first therapeutically active agent (claim 10), the antiinflammatory drug (claim 19), or the steroid (claim 20).

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Applicant submits that the present claims are unobvious from and patentable over claim 1 of U.S. Pat. No. 5,869,079, since the present claims recite that the second therapeutically active agent has a different activity other than the first therapeutically active agent of the implants.

In view of the above, applicant submits that the obviousness-type double patenting rejection has been overcome, and respectfully requests that the obviousness-type double patenting rejection of claims 10, 18, 19, 20, and 23 be withdrawn.

Rejection Under 35 U.S.C. § 103

Claims 10, 18-20, 22, 25, and 28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over EP 0474098 in view of Drost et al. (U.S. Pat. No. 4,756,911). In particular, the Office Action states that it would be obvious to add a second agent with activity similar to the first [active agent] to achieve the beneficial effect of both.

Independent claims 10, 19, 20, and 25 have been amended to recite that the release modulator comprises a second therapeutically active agent having a different activity than the first therapeutically active agent (claim 10), the antiinflammatory drug (claim 19), the steroid (claim 20), or the therapeutically active non-steroidal anti-inflammatory drug (claim 25).

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Applicant submits that the present claims are unobvious from and patentable over the combination of EP 0474098 and Drost et al. since, for example, the present claims recite that the second therapeutically active agent has a different activity other than the first therapeutically active agent of the implants. The combination of EP 0474098 and Drost et al does not even suggest the implants as recited in the present claims.

In addition, each of the present dependent claims is separately patentable over the prior art. For example, none of the prior art disclose, teach, or even suggest the present implants including the additional feature or features recited in any of the present dependent claims. Therefore, applicant submits that each of the present claims is separately patentable over the prior art.

In view of the above, applicant submits that the present claims, and claims 10, 18-20, 22, 25, and 28 in particular, are unobvious from and patentable over EP 0474098 in view of Drost et al. under 35 U.S.C. § 103.

Conclusion

In conclusion, applicant has shown that the present claims are not subject to obviousness-type double patenting, and are unobvious from and patentable over the prior art under 35 U.S.C. § 103. Therefore, applicant submits that the present claims, that is claims 10, 16-20, 22-25, 28, and 29 are allowable. Therefore, applicant respectfully requests the Examiner to pass the above-identified application to issuance at an early date.

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Should any matters remain unresolved, the Examiner is requested to call (collect) applicant's attorney at the telephone number given below.

Date: 7/27/05

Respectfully submitted,



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